

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**GENERAL MAJORITY PAC, a
Washington, DC, not-for-profit
corporation,**

Plaintiff

v.

**CAROL AICHELE, *et al.*,
Defendants**

NO. 1:14-CV-0332

(JUDGE CALDWELL)

Electronically Filed

DEFENDANTS' ANSWER TO THE COMPLAINT

Defendants Carol Aichele, Kathleen G. Kane, Jonathan M. Marks, Ian Harlow, and Trisha Malehorn, through their counsel, hereby answer the complaint for declaratory judgment and injunctive relief as follows:

I. Nature of Action

1-3. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent that a response may be required, Defendants submit that the United States Constitution and the Pennsylvania Election Code speak for themselves. Further, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than

independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditure as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

II. Jurisdiction and Venue

4-6. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**.

7-8. **ADMITTED**, except as to Defendant Ian Harlow. Though Defendant Harlow remains an employee of the Pennsylvania Department of State (“Department”), he is no longer assigned to the Department’s Bureau of Commissions, Elections and Administration (“BCEL”).

III. Parties

9-14. **ADMITTED**, except respecting ¶ 13. As noted above, Defendant Harlow is no longer the Deputy Commissioner of BCEL. The current Deputy Commissioner of BCEL is Stuart Keckler.

IV. Statement of Facts

15. **ADMITTED.**

16. It is **ADMITTED** that GMP intends to solicit and accept contributions from individuals, corporations, labor unions, and unincorporated associations, in an aggregate amount of two hundred and fifty dollars or more, and to spend those funds to advocate the election of Democratic legislative candidates in Pennsylvania. To the extent that it is alleged that these expenditures constitute “independent expenditures” as that term is defined by the Pennsylvania Election Code, this allegation constitutes a **CONCLUSION OF LAW** to which **NO RESPONSE IS REQUIRED**. By way of further answer, the Pennsylvania Election Code speaks for itself.

17. It is **ADMITTED** that GMP has stated that its intention is to not make contributions to, or to coordinate expenditures on behalf of, Pennsylvania candidates or political party committees.

18. The allegations in this paragraph of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent that a response may be required, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

A. Applicable Statutory Provisions

19-27. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent that a response may be required, Defendants aver that the Pennsylvania Election Code and court orders speak for themselves.

B. *Citizens United* and Its Progeny

28-35. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent that a response may be required, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

C. BCEL Opinion Request

36-41. It is **ADMITTED** that GMP submitted a letter to BCEL requesting that the Department reconsider its position regarding the prohibition in Pennsylvania law on corporations, labor unions, and unincorporated associations from making contributions to a political committee, and that BCEL provided a response. By way of further answer, to the extent that any corresponding

paragraphs of GMP's complaint references a document, the document speaks for itself and no further answer is required.

D. Harm to GMP

42. It is **ADMITTED** that GMP has stated that it is ready, willing and able to solicit and accept unlimited contributions from all sources, including corporations, unions and unincorporated associations, and to spend such funds on independent expenditures to promote the election or defeat of Pennsylvania legislative candidates in the 2014 election cycle. Defendants lack sufficient knowledge regarding GMP's internal operations to know whether GMP has the capability and intention to carry out its stated goals. By way of further answer, Defendants aver that Pennsylvania law does not recognize an "independent expenditure only" political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

43-47. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent that a response may be required, Defendants submit that the United States Constitution and the Pennsylvania Election Code speak for themselves. Further, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

48. It is **ADMITTED** that GMP has stated that it is ready, willing and able to solicit and accept unlimited contributions from all sources, including corporations, unions and unincorporated associations, and to spend such funds on independent expenditures to promote the election or defeat of Pennsylvania legislative candidates in the 2014 election cycle. Defendants lack sufficient knowledge regarding the reasons why GMP has not previously registered as a

political committee so as to engage in the aforementioned solicitation of funds to make independent expenditures to promote the election or defeat of Pennsylvania state legislative candidates. Therefore, the specific allegations regarding GMP's reasoning for not previously engaging in the solicitation and expenditure of funds for independent expenditures are **DENIED**. By way of further answer, the Pennsylvania Election Code speaks for itself. Further, Defendants aver that Pennsylvania law does not recognize an "independent expenditure only" political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

49. It is **ADMITTED** that the primary election in Pennsylvania for 2014 is May 20, 2014. To the extent that GMP is alleging that Section 1633(a) of the Pennsylvania Election Code (25 P.S. § 3253(a)) unlawfully burdens GMP's constitutional rights by not allowing it to make "independent expenditures," these

allegations are **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. By way of further answer, as the Court on March 10, 2014, entered a preliminary injunction, GMP is not currently subject to Section 3253(a)'s prohibition of "independent expenditures" and GMP is not subject to harm from the application of Section 3253(a) prior to the May 20, 2014 primary. Further, Defendants aver that Pennsylvania law does not recognize an "independent expenditure only" political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

50-51. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent a response may be required, the United State Constitution and the Pennsylvania Election Code speak for themselves. Further, Defendants aver that Pennsylvania law does not recognize an "independent expenditure only" political

committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

CLAIMS FOR RELIEF

52. Defendants incorporate by reference its responses to the allegations in paragraphs 1 through 51 of the Complaint.

53-59. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent a response may be required, the United State Constitution and the Pennsylvania Election Code speak for themselves. Further, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to

make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

60. Defendants incorporate by reference its responses to the allegations in paragraphs 1 through 59 of the Complaint.

61-62. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent a response may be required, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

63. Defendants incorporate by reference its responses to the allegations in paragraphs 1 through 62 of the Complaint.

64-68. The allegations in these paragraphs of the Complaint contain **CONCLUSIONS OF LAW** to which **NO RESPONSE IS REQUIRED**. To the extent a response may be required, the Pennsylvania Election Code speaks for itself. Further, Defendants aver that Pennsylvania law does not recognize an “independent expenditure only” political committee, nor does Pennsylvania law expressly prescribe the consequences to GMP were it to make expenditures other than independent expenditures contrary to its self-declaration. Rather, Pennsylvania law permits a political committee to make any contribution or expenditures as defined by the Election Code, including the making of contributions directly to candidates, candidate committees, political party committees and other political committees, as well as making expenditures in coordination with candidates, candidate committees, political party committees and other political committees.

Prayer for Relief

The remainder of the Complaint is a request for relief to which **NO RESPONSE IS REQUIRED.**

Respectfully submitted,

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Date: April 28, 2014

CERTIFICATE OF SERVICE

I, Howard G. Hopkirk, Senior Deputy Attorney General, hereby certify that on April 28, 2014, I caused to be electronically served the foregoing **Defendants' Answer to the Complaint** upon the following:

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